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May 6, 2013

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS 9955-P
P.O. Box 8010
Baltimore, Maryland 21244-1850

Re: CMS 9955-P, Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Proposed Rule

Dear Administrator Tavenner:

The Silver State Health Insurance Exchange appreciates the opportunity to comment on proposed rule CMS-9955-P published in the Federal Register on April 5, 2013¹ outlining conflict-of-interest, training, certification, and meaningful access standards for Navigators and non-Navigator assistance personnel. The proposed rule is based on sections 1311(d)(4), 1311(i), and 1321 of the Affordable Care Act (ACA).

The proposed rule seeks to ensure that Navigator and non-Navigator assistance personnel will be fair and impartial, will be appropriately trained, and will be accessible to all consumers who may need to obtain assistance from such personnel. We appreciate the objectives of the proposed rule and request consideration of the following comments.

45 CFR § 155.210 NAVIGATOR PROGRAM STANDARDS

The rule proposes at 45 CFR § 155.210(c)(1)(iii) that Navigators must meet any licensing, certification or other standards prescribed by the State or Exchange, "so long as such standards do not prevent the application of the provisions of Title I of the ACA." We agree that State or Exchange standards should not be allowed to prevent the application of the provisions of Title I of the ACA.

However, in the explanation of 45 CFR § 155.210(c)(1)(iii) on page 20585 of the Federal Register, CMS asserts that a requirement by a state or an exchange that Navigators obtain errors and omissions insurance would be an example of a State or Exchange standard contrary to Title I of the ACA. We take no position concerning the merits of not requiring Navigators to carry errors and omissions insurance. However, we do not feel that a requirement to carry errors and

¹ [CMS-9955-P](#) Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel, Federal Register, Vol. 78, No. 66, Friday, April 5, 2013, Rules and Regulations, pp. 20581-20597.

omissions insurance would prevent the application of provisions of Title I of the ACA. Therefore, we believe the issue should be left to the discretion of the state or the exchange.

45 CFR § 155.215 STANDARDS APPLICABLE TO NAVIGATORS AND NON-NAVIGATOR ASSISTANCE PERSONNEL

The rule at 45 CFR § 155.215 proposes (a) conflict of interest standards, (b) training standards, (c) Culturally and Linguistically Appropriate Services (CLAS) standards and (d) standards ensuring access by persons with disabilities. The rule proposes these standards be applicable to Navigators and non-Navigator Assistance Personnel carrying out consumer assistance functions under 45 CFR §§ 155.205(d) and (e) and 155.210 in a Federally-Facilitated Exchange (FFE) and to non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.

We agree, in general, with many of the provisions included in the proposed rule, other than those provisions discussed in greater detail below. Indeed, the Silver State Health Insurance Exchange has already adopted many of the provisions in its plan for [Navigators, Enrollment Assistors, Certified Application Counselors and Producers](#). Furthermore, we agree the standards for FFE Navigators and FFE non-Navigator Assistance Personnel should be aligned. The detail provided for the standards is appropriate because it will be used to determine conduct of FFE Navigators and will also be used as a template for states as they design their Navigators programs.

However, proposed rule *misaligns* the requirements for State Based Exchange (SBE) Navigators and SBE non-Navigator Assistance Personnel which are both monitored by the SBE. This creates inefficiencies at the state level because the rule proposes *different* standards for SBE Navigators and SBE non-Navigator Assistance Personnel. **Therefore, we recommend that any reference to non-Navigator Assistance Personnel funded through an Exchange Establishment Grant be deleted from 45 CFR § 155.215. Instead, we recommend the addition of a new subsection that aligns standards for SBE Navigators and SBE non-Navigator Assistance Personnel** as follows:

(f) A state-based exchange that uses non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act shall ensure such personnel:

(1) Meet the conflict of interest standards required to be met by all entities and individuals to be awarded Navigator grants pursuant to 45 CFR § 155.210(b)(1), (c)(iv) and (d);

(2) Meet the training and certification standards required to be met by all entities and individuals carrying out Navigator functions pursuant to 45 CFR § 155.210(b)(2), (c)(iii) and (c)(v); and

(3) Comply with 45 CFR § 155.210(e)(5).

45 CFR § 155.215(A) CONFLICT-OF-INTEREST STANDARDS

The rule proposes at 45 CFR § 155.215(a)(1)(ii) that all Navigator entities must submit to the Exchange “a written plan” to remain free of conflicts-of-interest during the term as a Navigator.

The expected content of such written plans and the method of evaluating such written plans are not delineated in the proposed rule.

As an alternative to that requirement, **we recommend that 45 CFR § 155.215(a)(1)(ii) state that the Exchange may request a plan from a Navigator entity to remain free of conflicts-of-interest to the extent that the Exchange deems such a plan to be necessary and appropriate.** The Exchange might consider such a plan to be necessary and appropriate in particular instances, such as with respect to some large or geographically dispersed organizations that may need to adopt formalized hiring, orientation and training plans related to preventing conflicts-of-interest.

We recommend that an attestation from all Navigators to remain free of conflicts-of-interest during the term as a Navigator be included as an attestation requirement under 45 CFR § 155.215(a)(1)(i)(E). Such an additional attestation, rather than a written plan for all Navigators, would be an appropriate safeguard in many instances.

We recommend the same changes with respect to the rule proposed at 45 CFR § 155.215(a)(2)(iii) that non-Navigator assistance personnel submit “a written plan” to Exchanges to remain free of conflicts-of-interest while carrying out consumer assistance functions. As an alternative to the proposed rule, **we recommend that 45 CFR § 155.215(a)(2)(iii) allow the Exchange to request a plan from a non-Navigator entity to remain free of conflicts-of-interest to the extent that the Exchange deems such a plan to be necessary and appropriate.** **We also recommend that an attestation from non-Navigator assistance personnel to remain free of conflicts-of-interest be included as an additional attestation requirement under 45 CFR § 155.215(a)(2)(ii)(E).**

45 CFR § 155.215(b) TRAINING STANDARDS

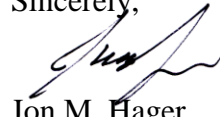
The rule proposes at 45 CFR § 155.215(b)(1)(ii) and (iii) that non-Navigator assistance personnel funded through an establishment grant must register for an complete a HHS approved training and complete and achieve a passing score on all approved certification examinations. While we support training and testing requirements for non-Navigator assistance personnel, we are concerned SBE non-Navigator assistance personnel will be held to a different standard than SBE Navigators. Furthermore, no standards are provided to determine how a training course might become HHS approved. **Therefore, we recommend all non-Navigator assistance personnel funded through an establishment grant meet the training and certification standards required to be met by all entities and individuals carrying out Navigator functions pursuant to 45 CFR § 155.210(b)(2), (c)(iii) and (c)(v).** Similarly, we recommend 45 CFR § 155.215(b)(1)(iv) indicate that non-Navigator assistance personnel funded through an establishment grant meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable to mirror the requirement in 45 CFR § 155.210(c)(iii).

The proposed rule at 45 CFR § 155.215(b)(1)(v) requires non-Navigator assistance personnel be prepared to serve both the individual Exchange and the SHOP. We agree that states should

create programs to ensure both the individual and SHOP populations are served. However, requiring that all non-Navigator assistance personnel serve both populations may be an inefficient use of training resources. State may find that specific organizations are better suited for one population and should not be required to serve both. The state based exchange, not the federal government, is in the best position to determine the use of resources. The same argument applies to the standards required in 45 CFR § 155.215(b)(2). Therefore, **we recommend these standards provided at 45 CFR § 155.215(b)(1)(v) and 45 CFR § 155.215(b)(2) not be applicable to non-Navigator assistance personnel funded through an establishment grant.**

We appreciate the opportunity to offer these comments and look forward to working with you further on these and other health insurance exchange implementation activities. Thank you very much for considering our input.

Sincerely,



Jon M. Hager
Executive Director, Silver State Health Insurance Exchange

cc: Jackie Bryant, Deputy Chief of Staff, Office of the Governor
Barbara Smith Campbell, Silver State Health Insurance Exchange Board Chair
Mike Willden, Director, Department of Health and Human Services
Scott Kipper, Commissioner of Insurance, Division of Insurance
Gary Cohen, Director, Center for Consumer Information and Insurance Oversight
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